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OGC HAS REVIEWED.

25 JUL 1960

CONFIDENTIAL

MEMORANDUM FOR: General Counsel

SUBJECT: Adjudication of Overpayment of Salary [redacted]

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1. According to a recent payroll audit by Office of the Comptroller Mr. [redacted] GS-13, Supervisor of Night Shift, Administration Building Printing Plant, has been overpaid by \$582.90 during the past several years and has been directed to refund this amount to the U. S. Government. This overpayment occurred as a result of computation on the part of the vouchered payroll office based on data furnished on time and attendance reports certified by Printing Services which resulted in payment of the 10% night differential for hours worked from 4 to 6 p.m. and for periods of paid leave during the period from 5 May 1957 through 9 January 1960. Mr. [redacted] GS-12, Production Planner, Night Shift, has likewise been overpaid for the same reasons from 22 September 1957 through 9 January 1960 and has been directed to refund \$698.25.

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2. In Tab 1, hereto, Messrs. [redacted] are "appealing" the refund on the basis that they are being deprived retroactively of premium pay benefits they formerly received as GPO employees and which they allege they had been assured they would continue to receive when they transferred from GPO to CIA.

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3. Representatives of the Fiscal Division, Office of the Comptroller preliminarily discussed this situation with Mr. [redacted] of your Office who requested a statement of facts. The Office of Personnel was requested to prepare such a statement because of its part as coordinator in the original take-over of the GPO Plant and its employees in January 1957.

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4. In accordance with the agreement between the DCI and the Public Printer, 19 November 1956, Tab 2, CIA agreed to offer employment to all GPO employees in the Plant as of the take-over. GPO employees who had originally worked for GPO in their other plants and had been transferred to the Administration Building Plant had the option of returning to the GPO if they elected not to accept CIA employment. Mr. [redacted] was in this category. GPO employees who were on the rolls of the Administration Building Plant when its control was transferred from Department of State to GPO on 1 February 1947 and GPO employees who had been recruited by GPO specifically for the Administration Building Plant were not given the option of returning to the GPO for assignment. Mr. [redacted] was of this group.

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5. The above agreement was explained to all employees concerned by GPO officials, Plant officials, and a representative of the Office of Personnel. Our basic CIA personnel program and policies were explained to the GPO employees. This was a matter of great interest, particularly to those having the option to return to GPO. Needless to say, the Chief, Printing Services Division, CIA, was most anxious that a large segment of this veteran printing force not pick up stakes and return to GPO. Insofar as our salary policy was concerned, it was pointed out that we already followed the GPO system for certain journeyman jobs in our [] Plant and that it was our intent to continue to apply, insofar as we could, the wage rates and associated benefits which they had as GPO employees. Further, that some situations could develop whereby some deviation might be necessary, such as in the case of the then pending attempt by Printers of the GPO to obtain a 37½ hour work week. Memorandums to Chief, Management Staff, 8 January 1957 and 19 December 1957, and a memorandum to General Counsel, 3 January 1957 are submitted in documentation of the "commitment" given (Tab 3). All personnel of the GPO Plant who accepted CIA employment were transferred at their existing GPO pay rates and fringe benefit privileges, including Mr. []

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6. On 29 March 1957, a new T/O was approved at the request of the Office of Logistics which established a new organizational structure for the Administration Building Plant and which established certain supervisory positions in the General Schedule at higher compensation rates than applied under the GPO system. The jobs concerned had been "Single Annual Rate" positions under the GPO and many had been the subject of requests to GPO for higher rates for some time, but appropriate adjustments in the view of the Chief of the Plant had not been made. (See Tab 4) At the request of the Office of Logistics, these positions were aligned with existing CIA Printing Supervisor positions in the [] Plant and GS grades were established in lieu of the existing lower GPO rates.

7. On 5 May 1957, Mr. [] was promoted from his GPO annual rate of \$6,622 p.a. (Day), \$7,615 p.a. (Night) to GS-12, \$7,570 plus 10% night differential which provided him an annual rate of approximately \$8,138. On 1 December 1957 he was promoted to GS-13 and was compensated at the rate of \$8,990 p.a. plus 10% night differential to total approximately \$9,664. This rate was adjusted to \$9,890 and \$10,632 with night differential on 12 January 1958 as a result of a GS Pay Schedule increase. Throughout this period he served on the same job.

8. Mr. [], appointed to CIA at his former GPO rate of \$7,010 p.a., received a GS Schedule wage adjustment to \$7,343 on 19 May 1957. On 2 June 1957 he was detailed from the day shift to the night shift and served there

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regularly and continuously for the former Night Shift Production Planner. A memorandum regarding this matter, dated 19 June 1957, is attached as Tab 5. This position, formerly compensated under the GPO system, had been changed to GS-12, \$7,570 base rate, on 29 March 1957 as part of the re-classification of managerial positions mentioned in the preceding paragraph. Mr. [] was promoted to GS-12 on 22 September 1957 with his pay adjusted from the GPO schedule rate of \$7,343 Day; \$8,444 Night; to the base GS-12 rate of \$7,570 plus 10% night differential. He subsequently received the 12 January 1958 pay increase applicable to GS positions resulting in a rate of \$8,330 plus 10% night differential. 25X1A9A

9. Under the GS Schedule, all personnel receive 15% night differential for all hours worked if more than half the tour is between 6:00 p.m. and 6:00 a.m. Overtime is paid at time and one-half without maximum limit on salary rate. Leave taken is paid at the night rate if personnel have a regular night tour of duty. Under the GS pay system, personnel receive 10% night differential for all hours worked between 6:00 p.m. and 6:00 a.m. They are limited to the equivalent of the maximum scheduled rate of GS-9 as the rate used in computing the time and one-half overtime differential. They do not receive night differential for leave even though they are on a regular night tour of duty. The regular night tour of duty for Printing Plant personnel is 4:00 p.m. to 12:30 a.m., which means GS personnel receive night differential for but 6 hours of the 8 hour tour.

10. The Comptroller General has ruled (34 CG 706), Tab 6, that the night rate of compensation of an employee occupying a prevailing rate position and a regular night tour of duty constitutes his basic compensation. This differs from treatment accorded GS personnel, for whom basic compensation is defined as comprising the day rate. Agency Regulation [] Pay Administration - Night Differential, recognizes this fact in paragraph 3. An extract from paragraph 5, U.S.C., 673c is submitted also in Tab 6 to further amplify this point.

11. The use of GS Schedule for managerial positions in the Printing Plant is considered within the administrative discretion of CIA management. Uniform pay treatment of managerial personnel in the printing trades (located in TSS, [], Administration Building, and other scattered locations) is considered essential by Logistics and other offices concerned and has been accomplished by the use of the GS system with generally satisfactory results. A pay differential for such managerial personnel over printers supervised has been maintained through utilization of appropriate GS grades with cognizance taken in establishing such grades of the more liberal overtime and night rates authorized for wage administration personnel.

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12. Tab 7 compares the pay Mr. [] would have received had [] followed strictly the GPO Schedule for his position with the pay rates he received since 5 May 1957 under the GS Schedule. A reconstruction indicates he would have received \$24,035, conditions remaining the same, including premium pay under the GPO Schedule as compared with \$28,756 claimed as the correct pay by the Office of the Comptroller. Thus, it would appear that he has benefited by our decision to convert his position to the GS Schedule and the Agency has not in fact deprived him of equivalent treatment to that which he would have received under GPO. While there are conflicting decisions of the Comptroller General regarding repayment, one that has possible application is (28 CG 514) which held that where administrative personnel actions are found after a substantial period of time to be erroneous upon post audit by the Civil Service Commission but not due to bad faith or fraud either on the part of the employee or administrative officials, the employee properly may be considered as serving in a de facto status under the authorized personnel action and may be permitted to retain compensation received by him prior to the time such error is brought to the attention of administrative officials. Other Comptroller General Decisions of possible application in this case are also cited in Tab 6.

13. Tab 8 compares compensation rates Mr. [] would have received in GPO with that he received in CIA. A review of this record reveals one pay adjustment which may have been improper and resulted in a considerable underpayment. As mentioned previously, Mr. [] was detailed to the night shift on 8 June 1957, although his official title on the Form 50 continued to be Negative Engraver (Sup) - Production Planner (Day). If we can establish that this detail of over three months during which he was compensated at the night GPO rate constituted a regular night tour of duty, he was entitled to use the night rate of \$8,444 per annum as his basic compensation (CG Decision, Tab 6) in connection with the 22 September 1957 promotion to GS-12. He was actually promoted from the GS day rate of \$7,343 to the base GS-12 rate of \$7,570. If the night rate of \$8,444 is determined to be his basic compensation he was entitled to receive not less than this amount upon promotion to GS-12, whereas he actually received, including 10% night differential, a salary of \$8,138 p.a. The lowest scheduled rate in GS-12 which would assure him no loss in basic compensation is that of \$8,000 p.a. or \$8,600 p.a. including night differential. Effecting this adjustment retroactively is permissible since Federal Civil Service and Agency policy provides for a mandatory system of pay adjustment upon promotion to provide that basic compensation received in wage administration positions be used in determining the rate received upon reassignment or

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promotion to GS positions, and that the individual receive not less than this previous rate if it is within the range of the GS grade. (Federal Personnel Manual, Sect. 25, 103) More specifically, OPM 20-605-10, 19 February 1957 provides in paragraph 12, "An individual promoted from a Government Printing (GP) position to a Classification Act Schedule position shall receive the lowest rate of the grade of the position to which promoted which exceeds his existing rate of pay. If the promotion action of 22 September 1957 is reprocessed at the \$8,000 p.a. rate, all subsequent personnel actions would have to be reprocessed at appropriate higher rates as specified in Tab 8, Column labeled "Correct CIA-GS". Thereupon, Mr. [] would be due a payment of \$554.63 rather than being overpaid by \$608.25. Detail of this adjustment is listed in Tab 8.

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14. In view of the foregoing your opinion is requested on the following questions:

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a. In the case of Mr. [] under the circumstances as outlined above, may they retain payments actually made during this period for night differential paid for the hours of 4 to 6 p.m. and while on annual leave?

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b. Should Mr. [] when on 22 September 1957 he was promoted to the GS-12 position have had his night differential included as basic compensation when determining which step of GS-12 he should have been paid on initially entering GS-12. If so, is he entitled to have the promotion action of 22 September 1957 and all subsequent actions reprocessed at the higher appropriate rate?

for Emmett D. Behole
Director of Personnel

Attachments
Tabs 1 through 8

Distribution:

- Orig & 1 - Addressee
- 1 - Comptroller
- 1 - D/Logistics
- 1 - D/Personnel
- 1 - C/Fiscal Div./O/Compt.
- 1 - C/PED/O/Log.
- 1 - C/END/OP
- 1 - C/PS/OP

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OP/PS/[] 21 Jul '60

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